

101ST CONGRESS
1ST SESSION

H. R. 1354

To strengthen the authority of the Federal Trade Commission respecting fraud committed in connection with sales made with a telephone.

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 1989

Mr. THOMAS A. LUKEN (for himself, Mr. WHITTAKER, Mr. BATES, Mr. RINALDO, Mr. ECKART, Mr. TAUKE, Mr. FLORIO, Mr. MANTON, Mr. SIKORSKI, Mr. SLATTERY, and Mr. SWIFT) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To strengthen the authority of the Federal Trade Commission respecting fraud committed in connection with sales made with a telephone.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Telemarketing Fraud
5 Prevention Act of 1989".

6 **SEC. 2. TELEMARKETING RULES.**

7 (a) **GENERAL RULE.**—The Federal Trade Commission
8 shall issue rules governing telemarketing activities. In issuing
9 such rules, the Commission shall include—

1 (1) a requirement that goods or services offered by
2 telemarketing be shipped or provided within a specified
3 period and that if the goods or services are not shipped
4 or provided within such period a refund be required,

5 (2) where practicable, authority for a person who
6 orders a good or service through telemarketing to
7 cancel the order within a specified period,

8 (3) restrictions on the hours of the day when un-
9 solicited telephone calls can be made to consumers,
10 and

11 (4) recordkeeping requirements.

12 (b) PROCEDURE.—The Commission shall promulgate
13 the rules under subsection (a) within 180 days of the date of
14 the enactment of this section and in accordance with section
15 553 of title 5 of the United States Code.

16 (c) VIOLATIONS.—Any person who violates any rule
17 issued under subsection (a) shall be considered to have en-
18 gaged in an unfair or deceptive act or practice in or affecting
19 commerce prohibited by section 5 of the Federal Trade Com-
20 mission Act.

21 **SEC. 3. PROHIBITED CONDUCT.**

22 A person who engages in telemarketing may not engage
23 in any conduct the natural consequence of which is to harass,
24 oppress, or abuse any person in connection with the telemar-
25 keting, including conduct which involves—

1 (1) the use or threat of the use of violence or
2 other criminal means to harm the physical person, rep-
3 utation, or property of any person,

4 (2) the use of obscene or profane language or lan-
5 guage the natural consequence of which is to abuse the
6 hearer or reader, or

7 (3) the placement of telephone calls without
8 meaningful disclosure of the caller's identity.

9 A person who engages in such conduct shall be considered to
10 have engaged in an unfair or deceptive act or practice in or
11 affecting commerce prohibited by section 5 of the Federal
12 Trade Commission Act.

13 SEC. 4. STATE ACTION.

14 (a) GENERAL RULE.—Any attorney general of a State
15 may bring a civil action in the name of the State in a district
16 court of the United States having jurisdiction of the defend-
17 ant to secure relief, as provided in subsection (c), against any
18 person who engages in telemarketing which is a fraudulent
19 act or practice or which violates—

20 (1) the rules issued under section 2(a), or

21 (2) section 3,

22 if the attorney general alleges that such telemarketing affects
23 the State or its residents.

1 (b) PROCEDURE.—No action may be commenced under
2 subsection (a) unless the Commission has been given written
3 notice of the commencing of the action—

4 (1) at least 30 days before the action is to be
5 commenced, or

6 (2) as early as practicable if the attorney general
7 commencing the action—

8 (A) alleges that the harm to the public is on-
9 going or presents an imminent hazard, and

10 (B) petitions the court for temporary or pre-
11 liminary relief from such harm.

12 The Commission may intervene, by its own attorneys, in any
13 such action, and the attorney general of another State may
14 intervene in any such action if the State or its residents are
15 affected by the telemarketing with respect to which the
16 action is brought.

17 (c) RELIEF.—In an action brought under subsection (a)
18 a court may grant such relief as the court finds necessary to
19 redress injury to consumers or other persons resulting from
20 the telemarketing for which the action is brought. Such relief
21 may include—

22 (1) rescission or reformation of contracts,

23 (2) the refund of money or the return of property,

24 (3) the payment of damages,

1 (4) public notification respecting the telemarketing
2 involved in the action, and

3 (5) injunctions.

4 An attorney general of any State may petition any court
5 which has jurisdiction of a person subject to an order of a
6 court granting relief to enforce such order with respect to
7 such person if the attorney general alleges that failure to
8 comply with such order affects such State or its residents.

9 (d) DEFINITIONS.—For purposes of this section—

10 (1) the term “attorney general” means the chief
11 legal officer of a State, and

12 (2) the term “State” includes the District of
13 Columbia.

14 SEC. 5. PRIVATE ACTIONS.

15 (a) GENERAL RULE.—Any person or member organiza-
16 tion comprised of financial institution members if one or more
17 of the financial institution members is eligible to commence a
18 civil action under this subsection may commence a civil
19 action to secure relief, as provided in section 4(c), against a
20 person who engages in telemarketing which is a fraudulent
21 act or practice or which violates the rules issued under sec-
22 tion 2(a) if the amount in controversy exceeds the sum or
23 value of \$50,000. Such an action may be brought in a district
24 court of the United States having jurisdiction of the
25 defendant.

1 (b) NOTICE.—No action may be commenced under sub-
2 section (a) unless the Commission has been given written
3 notice of the commencing of the action at least 30 days
4 before the action is to be commenced.

5 (c) INTERVENTION.—The Commission may intervene,
6 by its own attorneys, in any such action.

7 (d) COSTS AND FEES.—The court, in issuing any final
8 order in any action brought under subsection (a), may award
9 costs of suit and reasonable fees for attorneys and expert wit-
10 nesses if the plaintiff prevails.

11 (e) CONSTRUCTION.—Nothing in this section shall re-
12 strict any right which any person may have under any statute
13 or common law to seek enforcement of this Act or any rule or
14 order under this Act or to seek any other relief.

15 **SEC. 6. COMMISSION VIEWS.**

16 In any action brought under section 4 or 5, the district
17 court in deciding whether the defendant has violated a rule
18 issued by the Commission under section 2(a) shall give con-
19 clusive weight to the views of the Commission if the Com-
20 mission asserts that the defendant did not violate such a rule.

21 **SEC. 7. CLEARINGHOUSE.**

22 The Federal Trade Commission shall establish a clear-
23 inghouse for inquiries made to Federal agencies concerning
24 telemarketing. The clearinghouse will provide information
25 (other than information which may not be disclosed under

1 section 552(b) of title 5 of the United States Code) to anyone
2 making inquiries respecting persons engaged in telemarketing
3 or direct such inquiries to the appropriate Federal or State
4 agency.

5 **SEC. 8. DEFINITIONS.**

6 For purposes of this Act:

7 (1) The term "Commission" means the Federal
8 Trade Commission.

9 (2) A financial institution or other participant in a
10 payment system used to pay for goods or services of-
11 fered or sold through telemarketing, including the
12 credit or payment authorization aspect of such payment
13 system, is not, solely by virtue of such participation, a
14 person who engages in telemarketing or acts in concert
15 with, or on behalf of, a person who engages in tele-
16 marketing.

17 (3) The term "telemarketing" means a plan, pro-
18 gram, or campaign designed to induce purchases of
19 goods or services to be consummated over the tele-
20 phone but does not include order taking over the
21 telephone.

22 **SEC. 9. ADMINISTRATION OF ACT.**

23 (a) **GENERAL RULE.**—Except as otherwise provided in
24 sections 4 and 5, this Act shall be enforced by the Commis-
25 sion under the Federal Trade Commission Act.

1 (b) APPLICATION OF ACT.—The Commission shall pre-
2 vent any person from violating a rule issued under section
3 2(a) or the prohibited acts of section 3 in the same manner,
4 by the same means, and with the same jurisdiction, powers,
5 and duties as though all applicable terms and provisions of
6 the Federal Trade Commission Act were incorporated into
7 and made a part of this Act. Any person who violates such a
8 rule or section 3 shall be subject to the penalties and entitled
9 to the privileges and immunities provided in the Federal
10 Trade Commission Act in the same manner, by the same
11 means, and with the same jurisdiction, powers, and duties as
12 though all applicable terms and provisions of the Federal
13 Trade Commission Act were incorporated into and made a
14 part of this Act.

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